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**FIFTH REPORT TO THE NEGOTIATING COUNCIL
BY THE TECHNICAL COMMITTEE ON THE
INDEPENDENT ELECTORAL COMMISSION**

29 JUNE 1993

1. The Technical Committee notes that the first draft of its proposed Independent Electoral Commission Act was considered in some detail by the Negotiating Council at its meeting on Monday 28 June 1993. The Committee has been instructed by the Council to proceed as expeditiously as possible with the preparation of a second draft, with due regard to the concerns and instructions expressed during the course of the debate, and in the light of some 33 written submissions which have been received from various parties.
2. Regrettably, the Technical Committee was not present during the debate, as its members were not informed that the matter would be placed on the agenda until a few hours before the debate was scheduled to commence. In the circumstances, the Committee is reliant for its instructions upon the availability of a transcript of the debate which, at the time of preparation of this report, is not yet available.
3. It is, however, apparent that significant amendments will be required to accommodate issues raised in the course of the debate and in the written representations, and to incorporate also certain alternative formulations which the Committee has itself developed since the tabling of its initial draft.
4. The Committee is also now mandated by the Council to take under review the existing provisions of the Electoral Act, with a view to their amendment in order to harmonise with the envisaged new dispensation. It must also be borne in mind, that these Acts will have to be drafted in the light of decisions which have yet to be finalised, with reference to a future constitution, and in particular the proposed Transitional Executive Council.
5. Accordingly, it will not be practicable for the Technical Committee to table a new draft of the Independent Electoral Commission Act, as requested, by Wednesday 30 June 1993, since this would imply finalisation of the draft within a few hours of receiving the awaited transcript. The Committee will, however, proceed as a matter of urgency with the preparation of such further draft, in order to ensure that it is available for the further consideration of the Negotiating Council at the very earliest possible opportunity.

ANNEXURE A

AMENDMENTS TO CLAUSES 16 AND 17 OF THE SECOND DRAFT OF THE
INDEPENDENT ELECTORAL COMMISSION ACT

3.1 Replace Sub-Section 16.1 with the following:

"Objects of the Commission

The objects of the Commission shall be -

- (a) to organize and supervise free and fair elections as may from time to time be conducted in the Republic or any part thereof in terms of the Constitution and in accordance with the Electoral Act and the provisions of this Act;
- (b) to supervise and co-ordinate the directorates entrusted with the conducting, monitoring and adjudication of such elections, throughout the duration of its term;
- (c) to promote conditions conducive to free and fair elections;
- (d) to educate the voter public regarding -
 - (i) democratic principles and values;
 - (ii) the electoral process and mechanisms;
 - (iii) the right to free political canvassing and campaigning;
 - (iv) secrecy of voting and other relevant matters,

by means of literature and the use of other media as it may deem appropriate, including distribution and publication of suitable literature, advertisements, and dissemination through radio, television and the public print media; having due regard to the variety of languages spoken throughout the Republic;

- (e) to certify the election, after the conclusion of the process, as having been free and fair, or not".

3.2 Replace Sub-Section 16.2.1 with the following:

"An Election Administration Directorate, which shall consist of a Chief Electoral Officer, two deputies and such other officials as the Commission may deem fit, to conduct the election in terms of the provisions of the Electoral Act".

3.3 After Sub-Section 16.2.3 to insert:

"The members of each of the directorates referred to in sub-section 16.2 shall be appointed by the Commission after it has invited and considered written submissions from members of the Transitional Executive Council".

*§. TEC in consultation
with Commission*

3.4 Replace Sub-Section 16.4 with the following:

"Each such Directorate shall operate independently of the others and the Commission; provided that they shall all be accountable and provide regular progress reports to the Commission".

In terms of the appeals provisions, the Commission would retain certain powers to issue directives and to review, rescind and vary some of the decisions taken by the Directorates or their functional sub-structures.

3.5 Replace Section 17 with the following:

"17. Responsibilities of the Election Administration Directorate

The Election Administration Directorate shall carry out the responsibilities allotted to it by the Electoral Act as well as those responsibilities allocated to it by the Commission".

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GENERAL EXPLANATORY NOTE
SECOND DRAFT
OF THE INDEPENDENT ELECTORAL COMMISSION ACT
SUBMITTED BY THE TECHNICAL COMMITTEE
TO THE NEGOTIATING COUNCIL
OF THE MULTI-PARTY NEGOTIATING PROCESS
14 JULY 1993

1. In its initial draft (9 July 1993), the Technical Committee proposed an Act which would establish an Independent Electoral Commission:
 - 1.1 In respect of the First Elections; and
 - 2.1 In respect of Elections for a National Parliament; and
 - 3.1 In terms of the Electoral Act as it presently exists.
2. As a result of submissions subsequently received, and the debate which has taken place in the Negotiating Council, the Technical Committee has now reformulated its original proposal, in order to provide for:
 - 2.1 An Electoral Commission which would also supervise future Elections; and
 - 2.2 Legislation which would make provision for both National and SPR Elections; and
 - 2.3 The complete re-enactment of the existing Electoral Act.
3. It is appreciated that any draft legislation will have to be harmonised in due course with other "Transitional Legislation" under consideration in the Negotiating Council, including in particular:

The Transition to Democracy Act;
Legislation establishing a Transitional Executive Council;
The new Electoral Act;
The Independent Media Commission Act;
The Independent Broadcasting Authority Act; and
Such other legislation as may result from agreements reached in the Negotiating Council.

4. In the circumstances, the Technical Committee's Second draft of the Act has been prepared in such a manner as to permit a number of possible permutations, which will depend upon the outcome of the Negotiation Process. The present draft is susceptible to relatively simple editing to reflect whatever final agreements and decisions may be adopted by the Forum.
5. In view of the extent of the redrafting, it has not seemed appropriate to recapitulate the precise wording of the Technical Committee's First draft within the text of this Second draft. However, to facilitate consideration of this draft, the Technical Committee has provided references to the equivalent clause numbers within the First draft (in dark italics). The Second draft has also been provided with a series of footnotes of an explanatory and informative nature.
6. The Technical Committee now awaits the further instructions of the Negotiating Council with regard to the adequacy of this latest draft. Having given first priority to the preparation of the annexed Act, the Technical Committee will now proceed as expeditiously as possible with the second part of its mandate, namely the review and re-enactment of the Electoral Act.